(1998) 10 AHC CK 0062

In the Allahabad High Court

Case No : C.M.W.P. No. 20297 of 1995

Padam Kumar Rastogi APPELLANT

Vs

Ghaziabad Zila Sahkari Bank Ltd. and others RESPONDENT

Date of Decision : 08-10-1998

Acts Referred:
Industrial Disputes Act, 1947 — Section 18

Citation : (1999) 1 AWC 503

Hon'ble Judges : S.H.A. Raza, J;R.K.Singh, J

Bench : Division Bench

Advocate : Triloki Nath, for the Appellant; A. Kumar, for the Respondent

Final Decision : Allowed

Judgement

S.H.A. Raza, J.—In Uirendra Pal Singh and others v. District Assistant Ragistrar, Co-operative Societies, Etah and another. 1980 UPLBEC 202, Hon''ble Supreme Court observed :

"That though the age of retirement of employees of some of the co-operative societies was originally 60 years under the U. P. Co-operative Societies Employees Service Regulations, the age of retirement has now been made 58 years. We are unable to see any force in this submission. Regulation 24 (ii) itself provides that if before the coming into operation of the Regulations the society had entered into any contract with an employee on the date of his employment whereby he was entitled to continue beyond 58 years. The rule of retirement at the age of 58 years shall not apply and the age of retirement shall be governed by the contract. Therefore, if in any case there is a contract between a Cooperative Society and an employee entered into before the Regulations came into force stipulating the age of retirement as 60 years the regulation now stipulating the age of retirement as 58 years will not apply to him. We make it clear that this principle does not apply to the members of the Centralised service. The above, discussion covers all the points which were argued before us. In the result the civil appeal, the special leave petitions and the writ petitions are dismissed with costs."

2. In the light of the aforesaid observations of Hon''ble Supreme Court, it is necessary to elucidate the fact of the present case. The petitioner was appointed as Clerk in Meerut District Co-operative Bank Ltd., Meerut, (hereinafter referred to as Bank) by means of the order dated 24.7.1959. He was confirmed on the said post in the year 1960. On 1.4.1962 he was appointed as Junior Branch Manager of the Bank. In the year 1963. a dispute regarding pay and other service conditions between the various banks in Uttar Pradesh and their workmen arose. The U. P. Dank Employees Union championed the cause of the employees working in the bank. Ultimately. U. P. Government vide its Government Order dated 30.4.57 read with Government Order dated 4.3.1959 constituted an Industrial Tribunal III at Allahabad and referred the industrial dispute between the workmen and the Management of 50 district/central co-operative banks in U. P. vide notification dated 11.12.1963. The said dispute was registered as Adjudication Case No. 53 of 1963.

3. All the issues under reference were arrived at between the parties vide settlement dated 6.5.1965, which was signed by Shri B. B. Rajwanshi on behalf of the banks and Shri P. N. Tewari, President of the U. P. Bank Employees Union.

According to issue No, 7 of the said settlement, the age of retirement of employees was fixed at the age of 60 years. According to the petitioner, the said settlement was binding between the establishment of the bank and its employees.

4. The petitioner on 27.10.1971, was promoted as Senior Branch Manager and continued as such. In the year 1975 Regulations known as U. P. Co-operative Employees Service Regulations. 1975. [hereinafter referred to as the Regulations) were framed by the U. P. Co-operative Institutional Service Board, in accordance with the provisions contained in Section 122 of U. P. Co-operative Societies Act. Regulation 24 was amended in the year 1983 and in the year 1993. Regulation 24 as existed in the year 1975 provides that the age of retirement of an employee of the Cooperative Society shall be 58 years. By subsequent amendment in the year 1983. Regulation 24 provided as under :

"24. Retirement.--The date of superannuation from service of an employee of a Co-operative Society shall be :

(a) the date, on which he attains the age of 58 years, if he is appointed to a post in category 1. II or III :

Provided that, where, before commencement of the Uttar Pradesh Co operative Societies Employees Service Regulations, 1975. the Society had entered with an employee, at the time of his appointment, into a contract whereby the employee is entitled to be retained in service after the dale on which he attains the age of 58 years, the provision of this sub-clause shall not apply and the date of superannuation of such employee shall be determined in accordance with the terms of the said contract ;

(b) the date on which he attains the age of 60 years if he is appointed to a post in category IV."

5. According to the amendment made in the year 1993, Regulation 24 reads as under :

"24. Retirement.--The date of superannuation from service of an employee of a Co-operative Society shall be :

(a) in the afternoon of the last day of the month in which he attains the age of fifty eight years, if he is appointed to a post in category I, II or III :

Provided that, where, before commencement of the Uttar Pradesh Co operative Societies Employees Service Regulations, 1975, the society had entered with an employee, at the time of his appointment, into a contract whereby he is entitled to be retained in service after the date on which he attains the age of 58 years, the provisions of this sub-clause shall not apply and the date of superannuation of such employee shall be determined in accordance with the terms of the said contract ;

(b) in the afternoon of the last day of the month in which he attains the age of sixty years, if he is appointed to a post in category IV."

6. Later on the district Meerut was divided and new district Ghaziabad was created. In the year 1983 the District Co-operative Bank. Ghaziabad was formed after division of Meerut District Co-operative Bank, Meerut. The assets liabilities and staff of the Meerut District Cooperative Bank were also divided. On 13.3.1984, the Registrar, Co-operative Societies. U. P. took a decision regarding the employees of District Co-operative Bank, Meerut and Bulandshahr, who may opt for transfer to Ghaziabad District Cooperative Bank. The Registrar in the said letter clearly stated that the pay scale of aforesaid employees shall remain the same as in the Meerut Cooperative Bank. The petitioner gave his option for being transferred to Ghaziabad provided the conditions of service. pay scale, dearness allowance. bonus and other allowances and continuity in service shall remain the same.

7. The Meerut District Cooperative Bank Ltd. resolved to transfer the petitioner along with other employees to Ghaziabad District Co-operative Bank on the same terms and conditions of service in which they were working at Mecrut. Ghaxiabad District Co-operative Bank accepted the petitioner and others by passing a resolution on 11.4.1985. The petitioner continued as employee of Ghaziabad District Co-operative Bank Ltd., and worked as Senior Branch Manager on various branches of the aforesaid bank in the said district.

8. On 29.4.1995, the petitioner was served with a notice, issued by the Secretary/General Manager, Ghaziabad District Co-operative Bank Ltd., informing that on completing the age of 58 years, he will be retired from service on 31.7.1995. The petitioner sent a reply to the said notice stating therein that according to the settlement arrived at between the employees of Mecrut District

Cooperative Bank and the Management of the bank, the age of retirement was fixed as 60 years. The petitioner was transferred from Meerut District Cooperative Bank to Ghaziabad on the same terms and conditions, and hence the age of retirement of the petitioner would be 60 years and not 58 years. It was also pointed out that the age of the superannuation of the employees of the District Cooperative Bank, Meerut is still 60 years. On 21.7.1995, the petitioner was informed that according to Regulation 24 of Regulations of 1975, the age of retirement of the petitioner would be 58 years and he would be retired on 31.7.1995.

9. It was urged by Shri Triloki Nath, learned counsel for the petitioner that petitioner''s continuance in service in Ghaziabad District Co-operative Bank was not a new service, as before transferring the petitioner to Ghaziabad, it was agreed upon that the service conditions of the petitioner shall remain the same at Ghaziabad as well, hence the District Co-operative Bank, Ghaziabad is bound by the settlement prescribing the date of retirement of the employees as 60 years. It was submitted that the petitioner was covered by the exception provided in Regulation 24 and in accordance therewith he is entitled to continue in service till he attains the age of 60 years.

10. A similar question cropped up before this Court in Allahabad District Co-operative Bank Ltd. Vs. Lalji Srivastava, . The respondent. Shri Lalji Srivastava was appointed on 18.5.1960 as a Clerk in Allahabad District Cooperative Bank. By a notice dated 12.11.1992, by the General Manager of the Bank, the said respondent has been directed to retire from service on completion of 58 years of age. He challenged the above notice by means of a writ petition before this Court, which was allowed on 28.9.1993 and the notice of retirement was quashed by the learned single Judge on the ground that in view of the settlement dated 22.2.1966, the petitioner (Lalji Srivastava] can only be retired at the age of 60 years. Against the above judgment, the bank filed a special appeal, which came up for consideration before the Division Bench, which observed as under :

"Bank is an Industry and the respondent is a workman. Learned single Judge has recorded a categorical finding to the effect that the respondent is a workman and the settlement dated 22.2.1966 was a settlement within the meaning of Section 18 of the Industrial Disputes Act. Supreme Court in Life Insurance Corporation of India Vs. D.J. Bahadur and Others, , has laid down that settlement arrived at between employer and the workmen, under the Industrial Disputes Act shall remain in force till it is altered by a fresh settlement, award of valid legislation, it was further laid down that vis-a-vis industrial disputes between the employer and his workmen the Industrial Disputes Act is a special statute and the L.I.C. Act on the other hand is although special legislation vis-a-vis nationalisation of life insurance, but it is a general statute regarding the industrial disputes between the employer and his workmen. It was accordingly held that a settlement arrived at under the Industrial Disputes Act will prevail over the regulations framed under the L.I.C. Act. In the instant case the Act is a special statute vis-a-vis Cooperative, but as regards industrial disputes and its settlement, it is a general law. Settlement dated 22.2.1966 has overriding effect over Regulation 24. It is not disputed that there is neither any fresh settlement nor any award nor any Legislation altering the above settlement of 1966 with the result the said settlement wilt continue to govern the conditions of service and the respondent is entitled to continue to work up to the age of 60 years. The Impugned notice retiring him at the age of 58 years as such, cannot be sustained."

The Court further observed :

"In view of the law laid down by the Supreme Court in the case of L.I.C. of India v. D. J. Bahadur (supra) the settlement of 1966 arrived at between the Bank and its employees has continued to remain in force and is still operative and will continue to govern the conditions of service of the workmen till it is replaced or altered by a fresh settlement, award or valid legislation. The respondent, as such, can only be retired on completion of the age of 60 years and the impugned notice cannot be sustained."

11. The Secretary of the District Co-operative Bank Ltd., Meerut. by means of his certificate dated 27.7.1998 clearly indicated that in accordance with the documents available, it is certified that in the bank ''Joshi Award'' was not followed or implemented. Those employees, who were appointed prior to creation of U. P. Institutional Service Board will be governed by the settlement dated 6.5.1965 arrived at between the Management of the bank and its employees, according to which the date of retirement shall be 60 years.

12. It was urged by Shri A. Kumar, learned counsel for the respondents-bank that the settlement dated 6.5.1965 was in the nature of Interim settlement, which was not binding and the issue regarding the age of retirement is covered by ''Joshi Award'' dated June 25, 1971, which clearly provided that the date of the superannuation of the bank employees belonging to category I, II and III would be 58 years.

13. The contention of the learned counsel for the respondent bank is misconceived inasmuch as settlement has been accepted by the Management of the bank and the age of retirement of the employees, who were appointed before 1972 was still 60 years, which is borne out from the averments made in the writ petition, which has not been controverted and a certificate to that effect has also been Issued by the Secretary, District Co-operative Bank Ltd., Meerut.

14. The case of the petitioner is fully covered by the decision of Hon''ble Supreme Court in Virendra Pal Singh and others v. District Assistant Registrar. Co-operative Societies, Etah and another (supra) as well as the case of Allahabad District Co-operative Bank v. Lalji Srivastava (supra) because the case of the petitioner falls with the exception clause of Regulation 24, which provides that where there was an agreement entered before the commencement of Regulations, the age of retirement would be that which has stipulated in the

agreement or contract.

15. In Life Insurance Corporation of India Vs. D.J. Bahadur and Others, , it was observed that unless the settlement of 1974 is subsequently altered by fresh settlement, award or valid legislation, the same shall continue to be in force.

16. The said judgment was relied upon by the Division Bench of this Court in Allahabad Co-operative Bank v. Lalji Sriuastava (supra).

17. Admittedly, the ''Joshi Award'' was never acted upon or followed by the Meerut Co-operative Bank, The Co-operative Bank. Meerut continuously followed and implemented the settlement arrived at between the Management of the banks and its employees. The district Ghaziabad was carved out from the district Meerut and the petitioner opted for his posting in Ghaziabad on the same terms and conditions, which was accepted by both the bank, hence those service conditions cannot be altered on the pretext of the ''Joshi Award'', which itself indicated that existing benefits which were allowed to the employees of the bank will not be curtailed.

18. Plea regarding the ''Joshi Award'' was agitated before the Division Bench of this Court in review petition filed in the case of Lalji Sriuastava (supra), but it did not find favour with the Court and review petition was dismissed by the Division Bench. While dismissing the review petition, the Division Bench observed :

"Learned counsel for the respondent, in this connection, has submitted that although ''Joshi Award" has fixed the retirement age of workman as 58 years, but it has saved the existing benefits or emoluments which are available to the existing employees and it was for this reason that neither the Bank nor the respondent placed on record of the writ petition the ''Joshi Award'', although the Bank was a party to that award. At page 56 of Joshi Award it is mentioned that existing benefits or emoluments to the employees of the Bank, at the time of Award will not be affected by the Award and such benefits or emoluments will be personal to such employees. Prima facie the contention of the learned counsel for the respondent appears to be correct. But it is not necessary to express any final opinion on this issue, because no ground for review has been made out by the Bank. The second argument, therefore, has to be rejected."

19. As we have pointed out hereinbefore that ''Joshi Award'' itself indicated that existing benefits or emoluments to the employees of the bank at the time of Award will not be affected by the Award and such benefits or emoluments will be personal to such employees. It cannot be said that the ''Joshi Award'' has replaced the earlier settlement. Besides the above, the District Cooperative Bank. Meerut never followed or implemented Joshi Award, but implemented the settlement by superannuating the employees, belonging to I, II and III Category, on attaining the age of 60 years of age. Not a single instance has been cited before this Court that the District Cooperative Bank, Meerut has retired any employee of the bank at the age of 58 years, hence it would not lie in the mouth of the District Co-operative Bank, Ghaziabad to retire the petitioner at the age of

58 years when the services of the petitioner was transferred to Ghaziabad on the same terms and conditions under which he was working in the District Cooperative Bank, Meerut.

20. In view of what has been stated hereinabove, the writ petition succeeds and is allowed. A writ in the nature of certiorari quashing the notice dated 29.4.1995 is issued. As no interim order was passed, even after attaining the age of 60 years, the petitioner attained the age of superannuation on 31.7.1997, his reinstatement cannot be ordered. However, a writ in the nature of mandamus is issued commanding the respondents to pay to the petitioner his salary, allowances and other benefits with effect from 31.7.1995 (o 31.7.1997.

However, there shall be no order as to costs.

